In the Supreme Court of the United States.

OCTOBER TERM, 1904.

GEORGE W. BEAVERS, APPELLANT,
v.
CHARLES J. HAUBERT, UNITED States marshal, etc.
No. 354.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

The appeal in this case involves precisely the same questions presented in No. 355, and the two cases may therefore be considered and heard as one case.

The only difference in the two cases is that the writs of habeas corpus and certiorari in this case were applied for and issued by the district court for the eastern district of New York at a later stage of identically the same proceeding before the commissioner under section 1014.

The circuit court having dismissed the writ of habeas corpus issued on June 17, 1904, the commissioner proceeded to hear the case, the Government relying upon a certified copy of the indictment and the proof of identity as sufficient to make out a prima facie case. The defendant, Beavers, thereupon called certain witnesses in his own behalf, whose

names appear indorsed upon the indictment, and thereupon claimed that the prima facie case made out by the Government had been rebutted and overthrown. The commissioner, however, decided that there was probable cause to believe that an offense had been committed by Beavers in the District of Columbia. Thereupon application was made to the district judge for an order of removal, and Judge Thomas granted the same, and the defendant, Beavers, was committed to the custody of the marshal for removal to Washington. But before said order of removal could be executed, writs of habeas corpus and certiorari were issued by the United States district court for the eastern district of New York on the 30th day of June, 1904. A hearing upon these writs was thereafter had, and on the 5th day of July, 1904, the writs were dismissed and the prisoner remanded to the custody of the marshal.

This appeal was taken from the decision of the United States district court for the eastern district of New York, dismissing said writs of habeas corpus and certiorari, and the questions of law presented are substantially as follows:

First. The jurisdiction of the commissioner to proceed with the hearing under section 1014 of the Revised Statutes, during the pendency of an indictment against Beavers in the United States district court for the eastern district of New York.

Second. Whether the prima facie case made out by the Government upon the hearing before the commissioner was rebutted and overthrown by the evidence produced by the defendant.

Third. Whether the district court had jurisdiction to make the order of removal and surrender its own jurisdiction over the prisoner in favor of the jurisdiction of the supreme court of the District of Columbia without first trying the defendant upon the Brooklyn indictment, or requiring that the district attorney enter a nolle prosequi as to such indictment.

This case is substantially the same as No. 355, and in order that a prompt trial may be had upon the merits before the supreme court of the District of Columbia, the Solicitor-General, on behalf of the United States, moves that it be advanced and suggests that the case be set down for hearing along with No. 355, some time in the latter part of January or early in February next.

Notice of this motion has been served upon counsel for appellant.

HENRY M. HOYT,
Solicitor-General.

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